

Proposed Draft

NOTICE OF PUBLIC HEARING
TO CONSIDER ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
NO. R3-2008-0026
ISSUED TO
CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION
CALIFORNIA MENS COLONY

SAN LUIS OBISPO COUNTY

**NOTICE IS HEREBY GIVEN THAT A HEARING WILL BE HELD
BEFORE THE REGIONAL BOARD ON SEPTEMBER 4-5, 2008**

Background

The Assistant Executive Officer has issued an Administrative Civil Liability (ACL) Complaint pursuant to California Water Code Section 13323 (CWC) against the Department of Corrections (Discharger) alleging that it has violated its NPDES Permit (Order No. CA47856) by discharging untreated wastewater from the Discharger's wastewater treatment facility into Chorro Creek. The Complaint proposes that administrative civil liability in the amount of \$40,000 be imposed as authorized by CWC Section(s) 13385 (c). Unless the Discharger waives its right to a hearing and pays the proposed liability, a hearing will be held before the Central Coast Water Board during its meeting of September 4-5, 2008.

Purpose of Hearing

The purpose of the hearing is to receive relevant evidence and testimony regarding the proposed ACL Complaint. At the hearing, the Central Coast Water Board will consider whether to adopt the proposed assessment, modify it or reject it. If it adopts an assessment the Central Coast Water Board will issue an Administrative Civil Liability Order.

The public hearing on September 4-5, 2008, will commence at 9:00 a.m. or as soon thereafter as practical, or as announced in our Board meeting agenda. The meeting will be held at the Central Coast Water Board hearing room located at 895 Aerovista Place, Suite 101, San Luis Obispo. An agenda for the meeting will be issued at least ten days before the meeting and will be posted on the Central Coast Water Board's web page at <http://www.waterboards.ca.gov/centralcoast/>.

Hearing Procedures

A copy of the procedures governing an adjudicatory hearing before the Central Coast Water Board may be found at Title 23 of the California Code of Regulations, § 648 et seq., and is available at <http://www.swrcb.ca.gov> or upon

request. Except as provided in Title 23 of the California Code of Regulations (CCR), § 648(b), Chapter 5 of the Administrative Procedures Act (commencing with § 11500 of the Government Code) does not apply to adjudicatory hearings before the Central Coast Water Board. This Notice provides additional requirements and deadlines related to the proceeding. THIS NOTICE MAY BE AMENDED BY THE ADVISORY STAFF AS NECESSARY. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participation

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Coast Water Board, staff or others, at the discretion of the Central Coast Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Central Coast Water Board Prosecution Staff
- (2) California Men’s Colony, referred to as the Discharger

Contacts

Advisory Staff:

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Sacramento, CA 95814

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Coast Water Board (Prosecution Staff) have been separated from those who will provide advice to the Central Coast Water Board (Advisory Staff). Members of the Advisory Staff are Roger Briggs, Executive Officer and Frances McChesney, Legal Counsel. Members of the Prosecution Staff are Michael J. Thomas, AEO; Harvey Packard, Enforcement Coordinator; Matt Thompson, Senior Water Resources Control Engineer; Todd Stanley, Water Resources Control Engineer; and Jorge A. Leon, Legal Counsel. This Notice has been issued by the Advisory Staff based on a draft proposed by the Prosecution Staff.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in *ex parte* communications regarding this matter with members of the Advisory Staff or members of the Central Coast Water Board. An *ex parte* contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested party on the one hand, and a Central Coast Water Board member or an Advisory Staff member on the other hand, unless the communication is copied to all other designated and interested parties or made at a proceeding open to all other parties and interested persons (if verbal). Communications regarding non-controversial procedural matters are not *ex parte* contacts and are not restricted. Communications among the designated and interested parties themselves are not *ex parte* contacts.

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party shall request party status by submitting a request in writing (with copies to the designated parties) no later than 5 p.m. on August 1, 2008, to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812, with copies to all parties. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Central Coast Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by 5 p.m. on August 8, 2008. The

parties will be notified by 5 p.m. on August 13, 2008, in writing whether the request has been granted or denied.

Hearing Time limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have 45 minutes to testify, present evidence, and cross-examine witnesses, and each interested person shall have three minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the hearing officer upon a showing that additional time is necessary.

Written Evidence, Exhibits and Policy Statements

Designated parties shall submit in writing 18 copies of the following information to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA 95812 no later than 5 p.m. on August 15, 2008.

1. All evidence and exhibits proposed to be offered at the hearing.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness' proposed testimony, and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

In addition to the foregoing, each designated party shall send (1) one copy of the above written materials to each of the other designated parties at the address or addresses provided above by 5 p.m. on August 15, 2008. Service by email is acceptable.

Interested persons may submit one (1) copy of non-evidentiary policy statements by the close of the hearing.

In accordance with Title 23, CCR, Section 684.4, the Central Coast Water Board endeavors to avoid surprise testimony or evidence. Accordingly, oral testimony offered at the hearing that is beyond the scope of the previously submitted written testimony may be excluded. Power Point and other computer assisted visual presentations may, but are not required, to be submitted prior to the hearing as long as the contents do not exceed the scope of other submitted written material. Any witness providing written testimony shall appear at the hearing and affirm that the written testimony is true and correct.

Evidentiary Documents and File

The Complaint, related evidentiary documents and comments received are on file and may be inspected or copied at the Central Coast Water Board office at 895 Aerovista Place, Suite 101, San Luis Obispo, CA 93401. Many of these documents are also posted on-line at <http://www.waterboards.ca.gov/centralcoast/>. Although the web page is updated regularly, to ensure access to the latest information, you may contact Harvey Packard of the Prosecution staff.

Questions

Questions concerning this proceeding may be addressed to Frances McChesney, Senior Staff Counsel, State Water Resources Control Board, P.O. Box 100, Sacramento, CA, 95812.

Roger Briggs
Executive Officer

DATE